

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	No. 61626-9-I
Respondent,)	
)	DIVISION ONE
v.)	
)	UNPUBLISHED OPINION
PEDRO ALONZO FLORES,)	
)	
Appellant.)	FILED: May 18, 2009
)	

Grosse, J. — A court interpreter is statutorily required to be sworn in at trial but failure to object below waives the error, particularly here, where there is no showing of inadequate interpretation. Arguments not raised below will not be considered on appeal unless they concern a manifest error affecting a constitutional right. Where, as here, no prejudice is shown, there is no manifest constitutional error. Thus, we affirm the trial court.

FACTS

Early on August 26, 2007, Officer Andrew Popochock of the Bellevue Police Department pulled Pedro Flores over after observing multiple moving violations. Flores did not immediately stop but rather continued to drive through an apartment complex before pulling into a parking space. Flores jumped out of the car and Officer Popochock commanded him, both in Spanish and in English, to stop and put his hands on the roof of the vehicle. Flores complied. The officer frisked Flores for weapons but found none, though he observed that

Flores' breath smelled of alcohol.

Flores announced that he was leaving for his apartment and refused to comply with the officer's repeated requests that he sit down next to his vehicle. Officer Popochock decided to handcuff Flores to keep him from fleeing. Flores turned, upon Officer Popochock's request, with his arms held back and behind his body, but extended in such a way that the officer was unable to get the handcuffs around the wrists. The officer sought through verbal commands and then through physical force to restrain Flores in handcuffs. The two men were in a narrow space between Flores' vehicle and that of another in the parking lot. Flores turned and head-butted Officer Popochock in the chest and began striking at him. A struggle ensued during which both men repeatedly struck each other. A second officer arrived and the two police officers were then able to take Flores into custody. While under arrest and being transported to jail, Flores made several statements asserting his ability to prevail in a fight with Officer Popochock.

Flores was charged with third degree assault.¹ The court appointed a Spanish language interpreter, Angela Torres Henrick, to assist Flores at trial. Prior to trial, at the CR 3.5 hearing, Henrick introduced herself to the court:

Good morning, your Honor. My name is Angela Torres Henrick, T-O-R-R-E-S, H-E-N-R-I-C-K, Washington state certified interpreter for the Spanish language, permanently sworn in [the] superior court.

Henrick's qualifications were not examined by the court nor was she sworn in at

¹ See RCW 9A.36.031(g).

trial.² Defense counsel for Flores never raised any objections with regard to Henrick or her performance during trial.

Officer Popochock testified at Flores' trial, giving a detailed accounting of the circumstances surrounding Flores' arrest as he recalled them. Flores then took the stand and offered a different version of events. He claimed that the officer, having caught him by surprise upon exiting from his vehicle at his friend's apartment, sought to handcuff him, and then roughed him up for no apparent reason.

The jury convicted Flores of third degree assault as charged. The trial court sentenced him to 60-days' electronic home monitoring. Flores appeals.

ANALYSIS

Interpreter – Certification, Oath, Qualifications

On appeal, Flores contends that he was deprived of his constitutional right to a fair trial because his interpreter was not sworn in and her credentials and qualifications were not examined. Flores also contends that Henrick provided deficient interpretation during trial.

Under chapter 2.43 RCW, all non-English-speaking persons in criminal proceedings are entitled to the appointment of a qualified interpreter to assist them at trial.³ Such appointments serve to uphold criminal defendants'

² Chapter 2.43 RCW.

³ RCW 2.43.030(1) provides in part:

Whenever an interpreter is appointed to assist a non-English-speaking person in a legal proceeding, the appointing authority shall, in the absence of a written waiver by the person, appoint a certified or a qualified interpreter to assist the person throughout

constitutional rights.⁴ The appointment, however, is not constitutionally mandated.⁵

Henrick is a Washington State certified interpreter.⁶ If properly certified, the interpreter is presumed qualified. She was not administered an oath per

the proceedings.

ER 604 provides:

An interpreter is subject to the provisions of these rules relating to qualification as an expert and the administration of an oath or affirmation to make a true translation.

⁴ RCW 2.43.010 provides:

It is hereby declared to be the policy of this state to secure the rights, constitutional or otherwise, of persons who, because of a non-English-speaking cultural background, are unable to readily understand or communicate in the English language, and who consequently cannot be fully protected in legal proceedings unless qualified interpreters are available to assist them.

It is the intent of the legislature in the passage of this chapter to provide for the use and procedure for the appointment of such interpreters. . . .

See also U.S. Const. amend. VI; State v. Sengxay, 80 Wn. App. 11, 15-16, 906 P.2d 368 (1995).

⁵ State v. Teshome, 122 Wn. App. 705, 711, 94 P.3d 1004 (2004), review denied, 153 Wn.2d 1028 (2005) (citing State v. Pham, 75 Wn. App. 626, 633, 879 P.2d 321 (1994)).

⁶ **RCW 2.43.030. Appointment of interpreter**

(1) Whenever an interpreter is appointed to assist a non-English-speaking person in a legal proceeding, the appointing authority shall, in the absence of a written waiver by the person, appoint a certified or a qualified interpreter to assist the person throughout the proceedings.

(a) Except as otherwise provided for in (b) of this subsection, the interpreter appointed shall be a qualified interpreter.

(b) Beginning on July 1, 1990, when a non-English-speaking person is a party to a legal proceeding, or is subpoenaed or summoned by an appointing authority or is otherwise compelled by an appointing authority to appear at a legal proceeding, the appointing authority shall use the services of only those language interpreters who have been certified by the administrative office of the courts, unless good cause is found and noted on the record by the appointing authority.

statute nor were her credentials and competency confirmed on the record.⁷

Arguments not raised below are not considered by this court on appeal unless they concern a manifest error affecting a constitutional right.⁸ Accordingly, we limit our analysis to the examination of constitutional issues. Flores bears the burden of proving the error was manifest—meaning there is a substantial likelihood that but for the error or cumulative errors, the outcome of the trial would likely have been different.⁹ It is not enough to show obvious error.¹⁰

In State v. Sengxay,¹¹ this court upheld a defendant's burglary conviction where the trial court did not administer an oath to the interpreter. Like Flores, the defendant in Sengxay did not object below and could not identify any obvious mistakes or deficiencies in the actual interpretation at trial.¹² Similarly,

⁷ **RCW 2.43.050. Oath**

Before beginning to interpret, every interpreter appointed under this chapter shall take an oath affirming that the interpreter will make a true interpretation to the person being examined of all the proceedings in a language which the person understands, and that the interpreter will repeat the statements of the person being examined to the court or agency conducting the proceedings, in the English language, to the best of the interpreter's skill and judgment.

See also Comprehensive Code of Conduct, adopted by the Supreme Court in 1989 (requiring, inter alia, an interpreter be a disinterested party), codified as General Rule 11.1.

⁸ RAP 2.5(a)(3); State v. Sengxay, 80 Wn. App. 11, 15, 906 P.2d 368 (1995)(citing State v. Riley, 121 Wn.2d 22, 31, 846 P.2d 1365 (1993)).

⁹ Sengxay, 80 Wn. App. at 16 (citing United States v. Perez, 651 F.2d 268, 273 (5th Cir.1981)).

¹⁰ Sengxay, 80 Wn. App. at 16.

¹¹ 80 Wn. App. 11, 906 P.2d 368 (1995).

¹² Sengxay, 80 Wn. App. at 16.

in State v. Serrano,¹³ this court found waiver where the defense did not object at trial to the appointment of a qualified, but uncertified, interpreter because no prejudice was shown. Likewise, Flores did not object below and has failed to establish he was prejudiced. He is not entitled to any legal remedy.

Flores has also failed to establish any deficient performance by the interpreter that rises to the level of actual prejudice. Flores argues that Henrick could not immediately interpret certain questions at trial and had to ask for clarification. Minor confusion or delays in interpretation is far from deficient interpretation. And even if Flores was found to have received deficient interpretation, he would still have to prove he was prejudiced thereby. Unable to do so, Flores' claim here fails.

Prosecutorial Misconduct

Flores also argues on appeal that he was deprived a fair trial by prosecutorial misconduct. The prosecutor never clearly stated to the jury that they had to either find Officer Popochock was lying or entirely mistaken to acquit. According to Flores, the prosecutor improperly argued during closing that to find Flores not guilty, the jury had to find that Officer Popochock was either lying or mistaken.

We review the prosecutor's allegedly improper statements during closing, considering "the context of the total argument, the issues in the case, the evidence addressed in the argument, and the instructions given to the jury."¹⁴

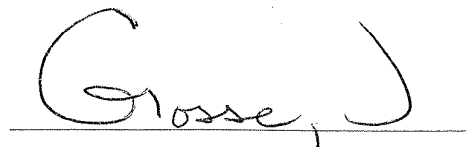
¹³ 95 Wn. App. 700, 704, 977 P.2d 47 (1999).

¹⁴ State v. Brown, 132 Wn.2d 529, 561, 940 P.2d 546 (1997)

Because Flores did not object below, reversal is warranted only if Flores can both prove the existence of prosecutorial misconduct, that it was material to the outcome of the trial, and that it could not have been easily remedied, such as through curative instructions.¹⁵ “[R]eversal is not required unless the misconduct was so flagrant and ill intentioned that a curative instruction could not have obviated the resulting prejudice.”¹⁶ Flores’ claim of prosecutorial misconduct lacks merit.

Assuming arguendo the prosecutor had engaged in misconduct, Flores must establish prejudice as well. When testifying, Flores recounted a very different scenario from that testified to by the officer. The prosecutor asked the jury to consider both Officer Popochock’s and Flores’ credibility and the relative merits of their testimony. Credibility of witnesses is a matter for the jury. Further, it is permissible to make statements based on inferences reasonably drawn from the evidence.¹⁷ Here, we find no prejudice.

The trial court is affirmed.

A handwritten signature in cursive script, appearing to read "Grosse", is written over a horizontal line.

WE CONCUR:

¹⁵ RAP 2.5(a); State v. Suarez-Bravo, 72 Wn. App. 359, 366-67, 864 P.2d 426 (1994).

¹⁶ Suarez-Bravo, 72 Wn. App. at 367 (citing State v. Belgarde, 110 Wn.2d 504, 507, 755 P.2d 174 (1988)).

¹⁷ State v. Wright, 76 Wn. App. 811, 826, 888 P.2d 1214 (1995), superseded by statute on other grounds by RCW 9.94A.364(6).

Elington, J.

Becker, J.